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January 16, 2007

Honorable John Laird  
Chair, Assembly Budget Committee  
State Capitol, Room 6026  
Sacramento, CA 95814

Honorable Denise Moreno Ducheny  
Chair, Senate Budget and Fiscal Review Committee  
State Capitol, Room 5019  
Sacramento, CA 95814

Dear Assemblymember Laird and Senator Ducheny:

Attached please find a copy of a status report on HAVA activities carried out under former Secretary of State Bruce McPherson prepared pursuant to budget control language adopted under Item Number 0890-001-0890, Provision 4 of the 2006-07 Budget.

I am hopeful that you will find the report informative and helpful in understanding the progress to date on HAVA activities, as well as the upcoming challenges.

If there are any questions from your office about this report, please feel free to contact me at (916) 651-7837.

Sincerely,

Chris Reynolds  
Deputy Secretary of State for HAVA compliance

cc: Honorable Curren Price, Chair, Assembly Elections and Redistricting Committee  
Honorable Ron Calderon, Chair, Senate Elections, Reapportionment and Constitutional Amendments Committee  
Honorable Juan Arambula, Chair, Assembly Budget Subcommittee, State Administration  
Honorable Michael Machado, Chair, Senate Budget Subcommittee, State Administration  
Elizabeth Hill, Legislative Analyst  
Michael Genest, Director, Department of Finance

**Status Report to the Legislature on  
Help America Vote Act of 2002 (HAVA) related activities**

Pursuant to Budget Control Language, the Secretary of State is required to report, by January 15<sup>th</sup> of each year, on the following activities, until the Statewide Voter Registration Database, required by Section 303 of HAVA is fully implemented. This status report is required to address the following areas:

- Election system security measures, including: (1) Source Code Review; (2) Parallel Monitoring; and (3) Poll Monitoring;
- The expected General Fund exposure for completion of HAVA compliance, including expected costs of administration; and
- Completion of the Calvoter database, including information on the costs associated with the use of contractors and consultants, the names of the contractors and consultants used, and the purposes for which contractors and consultants were used.

The information contained herein comprises the first annual status report:

**Election System Security Measures**

**Source Code Review** – The Secretary of State approves escrow facilities for deposit of source code and coordinates the deposit of source code in the approved escrow facility. In addition, the Secretary of State:

- Monitors escrow of source code in approved California facilities (EC §19103)
- Inspects and certifies escrow facilities (California Code of Regulations, Title 2, §20630-20682)
- Receives and distributes trusted builds of source code to voting jurisdictions
- Maintains records of voting systems in use.

Former Secretary of State Bruce McPherson entered into an Interagency Master Agreement (IMA) with the University of California for the purpose of securing educational, training or research services. That IMA could be expanded to include research services in the areas of computer science and voting system technology, including the development of source code review guidelines, practices and protocols. The IMA, which expires on June 30, 2007, requires the Secretary of State to develop mutually acceptable Task Orders in conjunction with the University of California that will serve as the basis for a subsequent agreement to provide specific services.

Although this mechanism may have been available to request voting system source code review, former Secretary of State McPherson devoted all resources and personnel devoted to the immediate task of conducting the 2006 primary and general elections (including testing and certification of voting systems used, or potentially available for use, in 2006). As a result, no Task Order was executed with the University of California for the purpose of conducting source code review. However, source code review for Direct Recording Electronic (DRE) and other voting systems is conducted at the federal level. State law requires all DRE voting systems to first be tested and certified at the federal level before they can be tested and certified at the state level. Additionally, a precedent was established during 2006 to use money deposited in the voting system escrow account by voting system vendors to pay for voting system tests or additional source code reviews conducted by the state. These mechanisms were used to conduct source code review for voting systems prior to enactment of the 2006-07 Budget and during the 2006 election cycle.

If the IMA with the University of California is used to develop a source code review program, it will be necessary to develop Task Orders to conduct the program. Funds provided by the Legislature for the purpose of conducting source code review have not been spent at this time.

Parallel Monitoring - Parallel monitoring was conducted in both the November 2005 Special Election and the November 2006 General Election. Parallel monitoring is a program that tests voting system units, selected at random, on Election Day under circumstances that simulate election-day conditions. The intent is to ensure that voting systems are performing on Election Day as intended and accurately capturing votes.

Former California Secretary of State McPherson hired the consulting firm Visionary Integrated Professionals, Inc. (VIP) to manage and conduct the Parallel Monitoring Program for the November 7, 2006 General Election. VIP was given the authority to plan, develop and manage all aspects of the effort, subject to review and approval by the Secretary of State's Executive Office and the Office of Voting System Technology Assessment (OVSTA).

The Secretary of State selected eight counties in which the Parallel Monitoring Program was to be conducted. The four major voting system vendors (Diebold, ES&S, Sequoia, and Hart) were each tested in two of the eight selected counties. The tests were performed on Election Day simulating a live election. The eight counties included in the program were: Kern and San Diego counties (for Diebold); Sacramento and San Francisco (for ES&S); San Bernardino and Tehama counties (for Sequoia); and Orange and San Mateo counties (for Hart).

According to VIP, after it reconciled all of the discrepancy reports, as well as the Voter-Verified Paper Audit Trails (VVPATs), and video recordings, each of the voting machines tested was found to have recorded all votes accurately.

A full copy of the Parallel Monitoring report can be found on the Secretary of State's website at any of the following locations: [http://www.ss.ca.gov/elections/elections\\_vs.htm](http://www.ss.ca.gov/elections/elections_vs.htm), (or) [http://www.ss.ca.gov/elections/elections\\_pub.htm](http://www.ss.ca.gov/elections/elections_pub.htm), (or) [http://www.ss.ca.gov/executive/press\\_releases/2007\\_news\\_releases.htm](http://www.ss.ca.gov/executive/press_releases/2007_news_releases.htm)

Election Day Observation (Poll Monitoring) - For the June 2006 primary, former Secretary of State McPherson sent a team of 31 election observers to 23 counties across the state. The observers (all employees of the Secretary of State's office) were asked to observe and report on how the county election officials, poll workers, and voters responded to election changes and what they found to be the biggest challenges or frustrations in meeting the new requirements. They were also instructed to look for innovative solutions and approaches, and to solicit poll worker suggestions.

In addition to the Parallel Monitoring effort noted above, during the November 7, 2006, General Election, 33 election observers went to 31 counties across the state. A few of these counties had been visited during the June 2006 primary, but most counties were new to the program. As in the June 2006 Primary Election, all observers were employees of the Secretary of State. All observers participated in training sessions, both in the counties and at the Secretary of State's office. Many of the observers participated in both the June and November programs.

In both elections, observers visited an average of 13 polling places (fewer in rural counties, more in urban counties).

Overall, under the report compiled by the former Secretary of State, the elections went very smoothly. Observers were very impressed by the dedication of the poll workers and local elections officials and their professionalism, friendliness and efficiency. When issues occurred, they were promptly addressed by local elections officials and had little or no impact on the voting process or the ability of voters to exercise their franchise. Some issues that were observed

occurred at sites throughout the county. Others were isolated incidents. Common challenges shared by many counties included: posting of all required signs, facility problems (locations, accessibility, lighting, heating, etc.), poll worker shortages, voters wanting a receipt from the VVPAT printer, and VVPAT paper jams.

However, while not reflected in these reports, there were a number of problems. For example, voting machines, a number of counties failed to have enough back-up paper ballots available to meet voters' needs when voting units failed; consolidated polling places led to extremely long lines in many areas; and laws requiring the posting of election results at polling places were ignored by some counties.

A full copy of each of the Election Day Observation final reports can be found on the Secretary of State's website at: [http://www.sos.ca.gov/elections/elections\\_vs.htm](http://www.sos.ca.gov/elections/elections_vs.htm)

### **Expected General Fund exposure for completion of HAVA compliance**

Expected General Fund exposure for completion of HAVA compliance (including expected costs of administration) – The 2006 election cycle was the first election cycle during which the full complement of HAVA requirements were required to be in place. In response to these new requirements, former Secretary of State McPherson executed contracts with county elections officials in 2005 related to specific mandates – a contract to reimburse them for the costs of upgrading voting systems; a contract to upgrade local election management systems (EMSs), which is the local repository of voter rolls, to enable these systems to integrate and synchronize with the required statewide voter registration database; contracts to migrate counties to a compliant EMS when the county's EMS could not be upgraded so it can integrate and synchronize with the statewide voter registration database; and contracts to improve polling place accessibility for voters with disabilities.

The voting system upgrade contracts, totaling an aggregate \$195 million for California's 58 counties, reimbursed counties for the cost to upgrade local voting systems or to buy or lease new voting systems to meet new federal voting system standards. Although California was fully compliant with HAVA requirements by the November 2006 general election, invoices are still being submitted for reimbursement. To date, just over \$62,701,000 in reimbursements have been allocated. There is the possibility that further changes to testing and certification protocols, or even voting system standards, will be promulgated at the federal and state levels. In addition, it is expected that vendors will be offering new products and/or upgrades to existing equipment, which counties may want to use and which may qualify for reimbursement under HAVA. Under the current testing processes, and provided that the voting system standards remain constant, there should be no state General Fund exposure associated with any activities relating to voting system requirements.

An "interim solution" to meet the requirements of Section 303 of HAVA for a statewide voter registration database was implemented by former Secretary of State McPherson and is fully operational. At present, all county EMSs are integrated and synchronized with the statewide database. However, the interim solution is not regarded as optimal by the federal enforcement authority for HAVA – the United States Department of Justice – and it is based upon an unsupported commercial product. A replacement system must be acquired or developed for long-term use. The Secretary of State's Office, which intends to pursue a business-based procurement approach to develop a voter registration database, has not yet finalized plans for the project, or issued a Request for Proposal to vendors to submit bids. (The completion of the (Calvoter) statewide voter registration database project is discussed further below.) To date, claims totaling \$2,175,975 have been approved for payment to integrate and synchronize local EMSs with the existing interim solution. No General Fund exposure is expected for the activities related to the interim solution.

Contracts totaling \$3,304,944 have been executed with 54 of California's 58 counties to reimburse efforts to improve physical access to polling places for voters with disabilities. The contracts allow the counties to spend money in up to four categories, pursuant to HAVA and additional guidance provided by the federal oversight authority for this program – the federal Department of Health and Human Services. Counties are spending money according to local needs within these categories. To date, \$525,446 in claims have been approved for reimbursement. No General Fund exposure is expected for the activities related to improving polling place accessibility.

The following ongoing needs are associated with the administration of the HAVA program:

Internally, ongoing Secretary of State staffing costs are estimated at \$1.7 million for the next two fiscal years. This funding will support the work of the HAVA coordinator, Elections Division staff, voting system testing and certification personnel, and administrative support (budgeting, accounting, and contracting services) for:

- Tracking and implementing changes to federal voting system testing and certification protocols and voting system standards;
- Activities related to further modifications to the statewide voter registration database project;
- Review and payment of county claims for reimbursement for their voting system upgrade contracts and contracts executed to improve polling place accessibility.

While these near-term costs associated with HAVA implementation are a certainty, long-term estimates are difficult to project because they may be affected by evolving federal standards and programs. Recent developments at the federal level include a reported recommendation from the National Institute of Standards and Technology (NIST) that a nationwide requirement for a voter-verified paper audit trail (VVPAT) on DRE voting systems be adopted by the Technical Development Guidelines Committee, which advises the federal oversight body for HAVA – the Election Assistance Commission (EAC) – on federal voting system standards. While California, like more than half the states in the nation, already requires a VVPAT for DRE voting systems, new federal standards may prompt changes in standards and technology that California could consider for implementation. It should be noted, as well, that a national VVPAT requirement has been proposed in Congress repeatedly over the past several years. Additionally, the federal voting system testing and certification process, until recently administered by the National Association of State Election Directors, is now under the purview of the EAC, as required by HAVA. It was recently revealed that one of the nation's three Independent Testing Authorities (ITA) that conduct federal testing of voting systems – Ciber, Inc. of Colorado – has not been accredited by the EAC to conduct further tests on voting system software because it found the ITA's practices did not meet its standards. Changes to the federal testing process, pursuant to problems discovered during ITA assessments by the EAC or by EAC policy decisions, may have an impact on California procedures, protocols and standards. As it stands, these are two of the most substantive developments that could impact the way California administers its HAVA program.

### **Completion of Calvoter database**

Completion of the Calvoter database (including information on the costs associated with the use of contractors and consultants, the names of contractors and consultants used, and the purposes contractors and consultants were used) – As previously indicated, California achieved "interim compliance" with HAVA Section 303 requirements for the November 2006 general election. Interim compliance was achieved pursuant to a Memorandum of Agreement (MOA) with the federal enforcement authority for HAVA – the United States Department of Justice (US DOJ). The MOA anticipates that California will pursue a long-term solution that includes modification, upgrades or development of an entirely new technology project to meet HAVA Section 303

requirements for a statewide voter registration database that must contain the name and other legally required information for California's 15.6 million registered voters. The database is also required to perform other functions, including: independent verification of voter data (such as a voter's driver's license number or a partial social security number); cross-reference of data from other state agency databases, such as death records from the state Department of Health Services; and list maintenance functions using the National Change of Address program.

The Secretary of State is in the early stages of assessing the interim solution and the HAVA requirements to determine the most cost-effective means to achieve long-term compliance. For the foreseeable future there is a continuing need for internal Secretary of State staffing including:

- Elections Division (program) support to maintain the interim solution and to assist in planning the long-term solution;
- Information Technology Division (technical) support to maintain the interim solution and to assist in planning the long-term solution;
- Administrative support (budgeting, accounting and contracting services) for activities related to planning and executing an RFP and a contract for modifications to the statewide voter registration database.

The potential project cost and ongoing costs for a long-term solution are highly dependent on the business rules, program requirements and vendor response to the business-based procurement process. The approved Feasibility Study Report (FSR) for the project proposed a business-based procurement, which will allow vendors to propose a variety of alternative solutions, with potentially a wide range of costs, to meet the state's business functional requirements. Cost projections in that FSR were based upon the best available estimates for one of the most costly acceptable alternatives. Current and near-term costs estimates in that FSR for contractor and consultant needs to support the long-term project, include:

- A contract project manager (projected costs of \$1,071,000);
- Consultant support for drafting the project RFP (projected costs of \$399,000)
- Project administrator/librarian (projected costs of \$307,500);
- Technical Architect (projected costs of \$1,122,000)
- Database Administrator (projected costs of \$810,000)
- Application developers (projected costs of \$810,000)
- Required Independent Project Oversight Consulting (projected costs of \$768,750);
- Required Independent Verification and Validation Consulting (projected costs of \$3,402,813)
- Contractor(s) to modify existing DMV, DHS and CDCR interfaces, if necessary (projected costs of \$2,100,000); and
- A primary system integration vendor contract (projected costs of \$32,684,310).

Only the contract for the project manager has been executed to date. The contractor is Kiefer Consulting, and the company's project management consultant is Linda Wasik.

Contracts for the primary system integration vendor and for the consultants to modify interfaces will not be executed until the procurement process has been completed, and a Special Project Report (SPR) is submitted to and approved by the Department of Finance. The need for some of the other contractors may be reduced or eliminated, depending upon the solution proposed by the selected system integration contractor.

The costs identified above will be paid for using federal HAVA resources allocated to California. Potential General Fund exposure is impossible to project at this time with any certainty. Right now, the operation of the statewide database relies heavily on integration and synchronization with local EMSs. The costs to maintain and operate local EMSs are the responsibility of the counties. Depending on the long-term solution that is developed, the state may incur some future

General Fund liability associated with continued operation and maintenance of the statewide voter registration database.